



REDUCING THE STRENGTH INITIATIVES

RETAILER GUIDANCE

INTRODUCTION

Local initiatives to tackle street drinking have the potential to make the local area safer, and to reduce alcohol harm. However, they also have the potential to place retailers at risk of breaching competition law, and if conducted in the wrong way, initiatives can be burdensome for retailers without tackling the problems they were designed to address.

This guidance is designed to help convenience retailers manage their relationship with local authorities and to understand the competition risks of working with local authorities to deliver local initiatives, commonly known as 'Reducing the Strength' initiatives.

What is a 'Reducing the Strength' initiative?

'Reducing the Strength' initiatives are local initiatives led by local authorities designed to tackle alcohol related harm associated with street drinking. As well as other measures to tackle street drinking, these initiatives attempt to remove high-strength alcohol products from sale through changes to a premise licences or more often through voluntary agreements with a retailer.

Most 'Reducing the Strength' initiatives target beers and ciders above 6.5% ABV, and many are located in areas that have significant problems with street drinking.

Why do we need guidance?

Retailers need to be able to make informed judgments about the quality of a local schemes and approach of the local authority running it before they can commit to participating.

Retailers need to be aware of the significant competition risks they could be exposed to by engaging with a badly managed 'Reducing the Strength' initiatives and the penalties associated with breaching competition law.

COMPETITION RISKS

Competition law attempts to prevent businesses from working together to fix prices, trading conditions or share commercially sensitive information that will disadvantage consumers or give them an advantage over other competitors. There is potential for businesses to breach competition law under a 'Reducing the Strength' initiative by:

- Sharing their business strategy by agreeing with other retailers, at a meeting, through bilateral conversations, not to sell certain products or to sell them at an agreed price

Example: A local authority holds a meeting of local convenience retailers and outlines their desire for all retailers to voluntarily not sell any beer above an ABV of 6.5% by a set date. They ask all the retailers in the meeting to agree to sign up to the initiative in the room with other retailers. If you find yourself in this situation you should call an end to the meeting and leave.

- Agreeing to participate in a 'Reducing the Strength' initiative based on information that other retailers will participate in the scheme, either directly or indirectly.

Example: A local authority officer visits a local convenience store and shows them a list of retailers that have agreed to sign up to the local authority's 'Reducing the Strength' initiative. On the basis of seeing the list the retailer decides to sign up.

The fact that an agreement is sanctioned by the government (national or local), or that discussions take place in the presence of Government Officials does not prevent a retailer from breaching competition law.

The Competition and Markets Authority (CMA) are the UK's lead competition and consumer body and has produced clear guidance on 'Local Authority Initiatives and Competition Law' which can be accessed at <http://bit.ly/17T9mVX>

DO'S AND DON'TS

DO consider the competition law implications of a local authority's proposals at an early stage

DO remember that despite the fact that an agreement is sanctioned by a local authority, or that the discussion takes place in the presence of authority officials, does not prevent it from breaching competition law.

DO ask the local authority if they adhere to the Local Government Association Guidance document; "Reducing the Strength Guidance for councils considering setting up an initiative"

DO seek independent legal advice where necessary. ACS provides a legal support helpline for members, for more information visit www.acs.org.uk.

DON'T ask or agree an approach with another retailer about supporting a 'Reducing the Strength' initiative

DON'T share sensitive commercial information (e.g. prices, costs, volume, future commercial strategies) with other retailers

DON'T meet up with other retailers before you have made a decision on whether to take part in an initiative, even if a local authority asks you to do so to discuss your involvement with a local initiative.

QUALITY OF INITIATIVE

The quality of 'Reducing the Strength' initiatives can vary greatly from one local authority to another. The core principles of good 'Reducing the Strength' initiatives include using an inclusive approach and targeted action to address defined health harms in particular areas.

There are a number of factors you should consider and questions you should pose to local authorities to identify the quality of a 'Reducing the Strength' initiative. Please see the list below for potential questions to ask your local authority:

Has the local authority defined the problem?

- Is there evidence of a high number of street drinkers in your area?
- Where do the street drinkers congregate?

What products are covered by the initiative?

- Does this match the products street drinkers use?
- How long will you have to prepare to comply with an initiative? For example, do you need time to sell through existing stock?

What other partners are involved?

- Have the police and local authorities been invited to join?
- What support is being provided to street drinkers?

How is the initiative to be evaluated?

- What impact has been made on the problem identified, and over what time is this being measured?

Is there clarity on what can be achieved through intervention?

- Is it designed to run in perpetuity or is there a time limit or a point where it has been deemed to have succeeded (impact on problem) or have failed?

Who owns the initiative?

- Is there a board or committee, or consultative mechanism in which you can get involved?
- Is this governance mechanism compliant with competition law?

How will the initiative communicate with participating retailers, other businesses, and the wider community?

ALTERNATIVE APPROACHES

Please be aware that there may be alternative approaches that the local authority and police can take:

Focus on Duty Fraud: It may be that a retailer feels the issues faced in the local area are related to duty fraud. There have been examples of links between street drinking, problem premises, and duty fraud product. Dealing in duty fraud product is an offence which should result in the removal of an alcohol licence. See the ACS Tackling Duty Fraud Guide for more information (www.acs.org.uk/advice).

Community Alcohol Partnerships: If the initiative appears to relate to under-age drinking rather than street drinking, CAPs are an established and effective way of tackling this problem. Information on setting up a CAP is here: <http://bit.ly/1Bmch7v>

Refusal to Serve Initiatives: Particularly where there are a small number of street drinkers being targeted with this initiative, it may be more effective to focus on not serving those individuals rather than removing products for all customers. These initiatives are challenging, and require engagement from local groups which help street drinkers, and they are a credible alternative to investigate.

ENFORCEMENT ACTION

Licensing conditions attempting to restrict the sale of higher-strength beers and ciders would require clear evidence specifically linking the sale of certain higher-strength beers and ciders at that premises to the breach of one of the licensing objectives, for example prevention of crime and disorder

Attempts to introduce generalised or blanket licensing conditions could exceed current licensing powers and licensees would be well within their rights to challenge such a condition both before and at a licensing review

Please remember that 'Reducing the Strength' initiatives are voluntary.

If you encounter pressure or threats of further licensing conditions, enforcement action or naming and shaming, please contact the ACS helpline or WSTA legal helpline for further legal advice or licensing support.

ACS Helpline: 01252 515001

WSTA Legal Helpline: 0333 006 1249

TRADE ASSOCIATIONS

ACS (the Association of Convenience Stores) is the voice of over 33,500 local shops, supporting our members through effective lobbying, comprehensive advice and innovative networking opportunities.

Contact: Edward.woodall@acs.org.uk or call **01252 533014**

The Wine and Spirit Trade Association (WSTA) is the voice of the wine and spirit industry in the UK, representing over 340 companies producing, importing and selling wines and spirits.

Contact: Carlo@wsta.co.uk or call **0207 0893 871**

Please note, this document constitutes guidance only. Seek legal advice as appropriate.

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THE WINE AND SPIRIT TRADE ASSOCIATION